

REMARKS

Applicants appreciate the consideration of the present application afforded by the Examiner. Claims 1-8 were pending prior to the Office Action, claims 9-17 being withdrawn from consideration. Claims 1 and 5 are independent. Favorable reconsideration and allowance of the present application are respectfully requested in view of the following remarks.

Objection to the Specification.

The specification is objected to for minor informalities. *See Office Action, page 2.* The specification has been amended to address this objection. Applicants respectfully request that the objection to the specification be withdrawn.

Claim Rejections – 35 U.S.C. §102

Claims 1, 2, 5, and 6 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 6,204,881 to *Ikeda et al.* (“*Ikeda*”). Applicants submit the Examiner has failed to establish a *prima facie* case of anticipation and traverse the rejection.

In order to establish a *prima facie* case of anticipation under 35 U.S.C. §102, the cited reference must teach or suggest each and every element in the claims. *See M.P.E.P. §2131; M.P.E.P. §706.02.* Accordingly, if the cited reference fails to teach or suggest one or more claimed elements, the rejection is improper and must be withdrawn.

Regarding independent claims 1 and 5, the Examiner alleges that *Ikeda* teaches an image combination method comprising the step of multiplying a combined data of the high output

image data and the low output image data by a total gain that depends on a scene. Applicants respectfully traverse.

The Examiner cites Figs. 32-33, col. 26, line 27 – col. 27, line 34, and col. 28, lines 6-10 as allegedly disclosing the features of the independent claims. However, the cited passages recite that image data I and image data II correspond to images sensed with different exposure amounts, and that gain control processing is individually performed on image data I and image data II in step S12 such that the image level of image data II corresponds with that of image data I. This gain control processing is performed prior to image data I and image data II being combined (see col. 27, lines 24-34). Then, after the gain control processing has been completed, image addition processing of image data I and image data II is performed in step S13 (see col. 28, lines 6-10).

In direct contrast, independent claims 1 and 5 require the step of “multiplying a combined data for the high output image data and the low output image data by a total gain that depends on a scene.” In other words, high output image data and low output image data are first combined and then multiplied by a total gain that depends on a scene. It is respectfully submitted by the Applicants that *Ikeda* does not disclose or suggest this limitation of the claims.

Therefore, at least because *Ikeda* fails to teach or suggest each and every claimed element, independent claims 1 and 5 are distinguishable from the prior art. Claims 2-4 and 6-8 depend from claims 1 and 5, directly or independently. Therefore, for at least the reasons stated with respect to claims 1 and 5, claims 2-4 and 6-8 are also distinguishable from *Ikeda*.

Accordingly, Applicant respectfully requests that the rejection under 35 U.S.C. § 102(b) be withdrawn.

CONCLUSION

All objections and rejections raised in the Office Action having been addressed, it is respectfully submitted that the present application is in condition for allowance. Notice of same is earnestly solicited.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact D. Richard Anderson, Reg. No. 40,439 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

By _____

D. Richard Anderson

Registration No.: 40,439

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant